1987 WL 19801

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United States District Court, N.D. Illinois, Eastern Division.

Eugene WZOREK, Petitioner,

v.

CITY OF CHICAGO, Respondent.

No. 84 C 9978.
Nov. 5, 1987.

MEMORANDUM OPINION AND ORDER

DECKER, Senior District Judge.

*1 Petitioner Eugene Wzorek ("Wzorek"), fired from his job with respondent, the City of Chicago ("the City"), seeks a rule to show cause why the City should not be held in contempt of the *Shakman* Decree, which, *inter alia* permanently enjoined the City from discharging an employee for political reasons. The City now moves for summary judgment on the alternate grounds that (1) politics did not influence Wzorek's discharge, or (2) even if politics played a role, it is immaterial because Wzorek would have been fired anyway.

I. *Factual Background*

Wzorek went to work for the City's Department of Streets and Sanitation as a truck driver in July, 1973, and in March, 1977 he transferred to the Department of Sewers. Prior to 1984 Wzorek held a non-career service status called Departmental Employment Service. In December, 1983, the Chicago City Council passed an ordinance that granted Wzorek and other similarly situated employees career service status upon completion of a probationary period lasting from January 1, 1984 to June 30, 1984. On June 29, 1984, Wzorek was fired, allegedly for poor job performance, by Eugene Barnes ("Barnes"), Acting Commissioner of the Department of Sewers.

Up until April, 1983, Wzorek resided in the City's 12th Ward and participated actively in the ward's Regular Democratic Organization ("Organization"). Wzorek supported the late Mayor Richard J. Daley, and, in 1982, contributed $1,000 to the mayoral campaign of Daley's son, Richard M. Daley. In April, 1983, Wzorek's residence was destroyed by fire, and he relocated outside of the 12th Ward. Subsequently, Wzorek discontinued his contributions to the 12th Ward Organization.

Barnes became the Acting Commissioner of the City's Department of Sewers on October 3, 1983. He publicized his intention to deny career service status to those probationary employees having more than ten absences without pay during the probationary period, and those with a history of poor work performance. The City alleges that, during the probationary period, Wzorek was absent without pay for a total of 7 ¾ days. With respect to his work record, in July, 1981 Wzorek received a written reprimand for his failure to wear a safety helmet. Also, in June, 1982 Wzorek was docked for fourteen hours for failure to follow orders.

II. *Discussion*

Summary judgment is appropriate if the parties' submissions demonstrate that there is no *genuine* issue of *material* fact and the moving party is entitled to judgment as a matter of law. *See* Anderson v. Libery Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505, 2510 (1986). The moving party will be entitled to judgment as a matter of law if the non-moving party fails to make a sufficient showing on an essential element of his case with respect to which he has the burden of proof. Celotex v. Catrett, 477 U.S. 317, 106 S.Ct. 2548, 2553 (1986).

The so-called *Shakman* Decree, a 1972 consent decree entered in *Shakman v. Democratic Organization of Cook County,* No. 69 C 2145 (N.D.Ill. May 5, 1972), reprinted at 481 F.Supp. 1315, 1356 App. (N.D.Ill.1979), *inter alia,* permanently enjoined the City and its agent-employees from: *2 conditioning, basing or knowingly prejudicing or affecting any term or aspect of governmental employment, with respect to one who is at the time already a governmental employee upon or because of any political reason or factor.

With respect to the instant petition, the City contends that politics was not a substantial factor in Wzorek's discharge, and, in the alternative, that any political motivation is immaterial because Wzorek would have been fired regardless.

Admittedly, the theory behind Wzorek's petition is ambiguous. As far as the court can determine at this point, Wzorek is arguing that he was fired either because of his support for the 12th Ward Organization, or because he discontinued this support, or both. Nevertheless, Wzorek in turn has alluded to sufficient ambiguity in the City's motivation for firing him so as to raise genuine issues of material fact.

First, Wzorek has produced evidence to challenge the City's primary contention, that politics played no part in Wzorek's discharge. John Lucille ("Lucille"), who was a foreman in the Department of Sewers and Wzorek's supervisor during part of his probationary period, testified about a meeting

called by Barnes in January, 1984. *See* Affidavit of Lucille ("Lucille Aff."). According to Lucille, Barnes stated emphatically that he was not going to allow all probationary employees to achieve career service status. *Id.* at ¶ 5. Lucille inferred that Barnes wanted to retrieve these jobs for Mayor Harold Washington. *See* Lucille Aff. at ¶¶ 6–7. If Barnes fired Wzorek pursuant to Washington Administration policy, responsibility for the discharge could be imputed to the City. *See* Monell v. New York City Department of Social Services, 436 U.S. 658 (1978).

Wzorek himself testified that he was warned by a supervisor, William Sommerford ("Sommerford"), that he had better continue to support the 12th Ward Organization to protect his job from the Washington Administration. *See* Deposition of Wzorek at 121–122. According to Wzorek, Sommerford also implied that Wzorek's $1,000 contribution to Richard M. Daley was no secret, and that it could hurt Wzorek if Daley were not elected Mayor. *Id.* at 118. Harold Washington, of course, won the Democratic primary and the election. Thus, Wzorek has raised genuine issues of material fact with respect to the City's contention that politics played no part in his discharge.

The City's alternate contention, that Wzorek would have been fired irrespective of politics, is equally dubious. The City reminds the court that, as a probationary employee, Wzorek could be fired for any reason so long as the Department of Sewers notified the Commissioner of Personnel of that reason. *See* Schedule of Exhibits in Support of Defendant's Motion for Summary Judgment ("Schedule"), Exhibit E, Section 6, ¶ 7, and Exhibit F, Rule IX, Section 3. *See also* Fontano v. Chicago, 646 F.Supp. 599 (N.D.Ill.1985) (probationary employee has no due process right to pre-discharge hearing). However, the fact that Wzorek *could* have been fired at will does not mean he *would* have been fired irrespective of political considerations.

*3 The City's main argument here is that Barnes' guidelines on probationary employees called for Wzorek's discharge. But this is far from self-evident. Barnes had announced he would dismiss anyone with more than ten absences without pay during the probationary period, but by the City's own count Wzorek had only seven and three-fourths.[1] Barnes had also announced he would discharge probationary employees with a history of poor work performance. The only two incidents of allegedly poor work performance to which the City can point were Wzorek's failure to wear a safety helmet in July, 1981, and his failure to follow a supervisor's order's in June, 1982. Even if Barnes was entitled to consider Wzorek's pre-probationary performance, Busa v. Barnes, 646 F.Supp. 619 (N.D.Ill.1986), a question the court need not address now, it is not clear that this performance would explain his dismissal. The City contends that a single failure to wear a safety helmet is sufficient cause for discharge, but Barnes admits that an isolated, two-year-old incident would probably not have been brought to his attention. Deposition of Barnes at 46–47. Wzorek's

failure to wear a helmet occurred only once and it occurred nearly three years before he was fired; his single, reported failure to follow orders, of which the court knows nothing more, occurred two years before. Schedule, Exhibit I. Juxtaposed to this dearth of negative feedback is evidence that Wzorek received very positive evaluations from his supervisors. *See* Lucille Aff. at ¶ 3; Deposition of Ned Madia at 29–30; Affidavit of Wzorek at ¶¶ 2–3.

In light of Wzorek's probationary attendance record and evidence regarding his overall job performance, there is a genuine issue of material fact as to whether Wzorek would have been fired irrespective of political considerations. Material factual questions thus remain as to each of the City's alternate contentions. Therefore, the City is not entitled to summary judgment.

III. *Conclusion*

The City's motion for summary judgment is hereby denied.

All Citations

Not Reported in F.Supp., 1987 WL 19801

Footnotes

1

Wzorek disputes this figure as being too high, but the court sees no reason to attempt resolution of the dispute at this time.